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LAND REFORM IN LATIN AMERICA: HOW TO HAVE A REVOLUTION WITHOUT A REVOLUTION

ROY L. PROSTERMAN*

"Fidel Castro is part of the legacy of Bolivar . . . [and he] also is part of the frustration of that earlier revolution which won its war against Spain, but left largely untouched the indigenous feudal order."

—John F. Kennedy¹

"The Second Declaration of Havana points out:

'In our countries two circumstances are joined: underdeveloped industry and an agrarian regime of a feudal character. That is why no matter how hard the living conditions of the urban workers are, the rural population lives under even more horrible conditions of oppression and exploitation. But, with few exceptions, it also constitutes the absolute majority, sometimes more than 70 per cent of Latin American populations.

'Not counting the landlords who often live in the cities, the rest of this great mass earns its livelihood by working as peons on the plantations for the most miserable wages, or they work the soil under conditions of exploitation indistinguishable from those of the Middle Ages.

'These are the circumstances which determine that the poor population of the countryside constitutes a tremendous potential revolutionary force.' "

—Ernesto Che Guevara²

"While, evidently, a regime's desire to implant far-reaching reforms is not a justification for establishing a rightist or a leftist dictatorship, the great question that arises is how the 'revolution of rising expectations' is to be concluded in the face of the powerful pressures and vested interests that, by definition, operate

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¹ STRATEGY OF PEACE (1960).

² GUERRILLA WARFARE: A METHOD 3 (1964).

freely in a democratic society. Premier Castro's belief that the social reforms of his revolution could never be carried out in the midst of an electoral campaign, or under a representative political democracy of the type Cuba has known in the past, cannot, of course, excuse his refusal to hold elections and his ultimately implanting a Communist dictatorship. But it is a thought-provoking argument, one that has captured the attention of millions of increasingly impatient Latin Americans. After years of national debate, Brazil has not been able to move ahead with any form of land reform, and this is true everywhere except for Venezuela, and to a small extent for Columbia and the Dominican Republic. Whether the new government and Congress in Peru and Argentina will be able to make a breakthrough in social reform is the great question overshadowing the fact of their election. . . .

[T]he record shows that most of the governments have not taken even the initial steps Bogged down in domestic politics, paralyzed by their parliaments, and held back by the local vested interests, they have preferred to stand still, as if awaiting a miracle that will solve the awesome economic and social problems of Latin American land tenure.

"That no start has been made constitutes the greatest fundamental failure of the Alliance [for Progress] thus far."

—Tad Szulc³

"To rely on the peasant, build rural base areas and use the countryside to encircle and finally capture the cities -- such was the way to victory in the Chinese revolution

"The countryside, and the countryside alone, can provide the revolutionary bases from which the revolutionaries can go forward to final victory."

—Lin Piao⁴

"Writing of his own country, Brazil's former Economics Minister Furtado has warned that unless a land reform is begun, the danger of 'Marxist-Leninist' revolution based, China-like, on the peasant masses has to be reckoned with."

—Tad Szulc⁵

³ THE WINDS OF REVOLUTION 230, 247-48 (rev. ed. 1965).

⁴ LONG LIVE THE VICTORY OF PEOPLES' WAR! 21, 48 (1965).

⁵ THE WINDS OF REVOLUTION 230, 247-48 (rev. ed. 1965).

It is almost universally recognized that land reform in Latin America is of vital interest to all of the countries of the hemisphere, and that it is long overdue.⁶ The degree of concentration of landholdings in the great estates (the *latifundios*) is astonishing: in Brazil, it appears that 1.5 per cent of all landholdings account for over 48 per cent of the farm area; in Chile, 1.4 per cent of holdings account for over 68 per cent of the farm area; in Ecuador, 0.17 per cent of holdings account for 37 per cent of the farm land; in Venezuela, 1.69 per cent of holdings account for 74 per cent of the farm land; in Guatemala, 0.15 per cent of holdings account for 41 per cent of the farm acreage, and so on. For Latin America as a whole, it has been estimated that roughly 90 per cent of the land belongs to 10 per cent of the owners, and that holdings of over 1,000 hectares (over 2,470 acres) account for only 1.5 per cent of the farms, but comprise over 64 per cent of the farm land.⁷ By way of comparison, it is interesting to note that in pre-revolutionary Cuba, 1.4 per cent of all holdings accounted for 47 per cent of the farm area.⁸

The rural population which lives directly under these conditions, while it may be less than the 70 per cent of total population suggested by the Guevara extract above, is nonetheless about 50 to 60 per cent of the total Latin American population.⁹

The statistics on land distribution are taken from articles written in 1956 and 1961, but it seems clear that little has changed since then:¹⁰

Half of all Latin Americans (obviously the poorer half) still make their living as farmers. Yet by 1965, according to a detailed study by the Inter-American Development Bank, "very little" had been done to implement land reform under the Alliance for Progress, though laws for that purpose were passed in Brazil, Chile, Colombia, Ecuador and Peru.

What has gone wrong? One author suggests that "A key issue, and perhaps the most controversial one, is the expropriation procedure."¹¹

⁶ The author's comments are intended to apply in large part to other less-developed areas as well, but there are few if any where reform has lagged so far behind, and certainly none of greater strategic importance to the United States.

⁷ These figures are from Kling, *Toward a Theory of Power and Political Instability in Latin America*, in *THE DYNAMICS OF CHANGE IN LATIN AMERICAN POLITICS* 130, 132-33 (Martz ed. 1965) [hereinafter cited as MARTZ], and Carroll, *The Land Reform Issue in Latin America*, in MARTZ 172, 173-74. Carroll adds that "This degree of concentration is far greater than that in any other world region of comparable size." *Id.* at 174.

⁸ Kling, *Toward a Theory of Power and Political Instability in Latin America*, in MARTZ 133.

⁹ See COLE, *GEOGRAPHY OF WORLD AFFAIRS* 110-11 (2d ed. 1963).

¹⁰ THE FOREIGN POLICY ASSOCIATION, *GREAT DECISIONS* 1966, at 78 (1966). See also SZULC, *THE WINDS OF REVOLUTION* 54-58 (rev. ed. 1965).

¹¹ Carroll, *The Land Reform Issue in Latin America*, in MARTZ 180.

But those in the legal profession—or the economists, for that matter—have thus far done very little to suggest ways of facing this “key issue.” Indeed it is the main burden of this article to argue that most of what has been suggested to date has been better suited to erecting the expropriation question into a permanent roadblock (permanent, that is, to the extent that present Latin American governmental structures are not destroyed by revolutionary uprisings), than to findings realistic legal and institutional accommodations which will permit land reform to go forward on a broad scale.

The point at which we have gotten off the track of reality seems to me to be tolerably clear. Much of the land-reform discussion of recent years has involved formulations of the duty to pay compensation to the landlords which have either frankly accepted or outrightly advocated paying less-than-full or no compensation under appropriate circumstances, *e.g.*, tracing back old land titles or rights in the peasants or *campesinos*,¹² or employing existing legislation on the books which could be used, in theory, to assert rights to uncompensated taking of inefficiently exploited or unused land.¹³

¹² See Karst, *Latin American Land Reform: The Uses of Confiscation*, 63 MICH. L. REV. 327 (1964). Apart from his views on *how* to accomplish land reform—with the compensation portions of which I am in strong disagreement—Professor Karst has certainly supplied, in the course of his admirably-researched article, a succinct description of *what* land reform is intended to do, *id.* at 359:

Giving rights in land to the *campesinos* is instrumental to feeding and housing them better, replacing their old attitudes of servility with a new sense of community responsibility, giving them a voice in the management of their lives, and giving them an incentive to educate their children. Other aims of land reformers are to break the restrictions on economic activity that are implicit in a hacienda society and to promote the development of the economy, partly through increased agricultural production (with some corresponding increase in the rural sector's demand for other products) and partly through an improvement in the level of investment.

¹³ See Galbraith & Morton, *Problems of Financing Land Distribution, Report of the Working Party*, in LAND TENURE 492, 497, 499 (Parsons ed. 1956) [hereinafter cited as LAND TENURE]. Even writers with marked affinity for formulations involving “full compensation” have indicated somewhat qualified views of what this means. See CHEN CHENG: LAND REFORM IN TAIWAN (1961). The author, Vice President and Premier of the Republic of China, emphasizes that compensation paid to the landlords was “fair and reasonable,” *id.* at xxi. Yet he notes that the first step in land reform was to set maximum rent paid by tenant farmers at 37.5% of the total annual yield of the main crop, *id.* at xii, 18-48, versus a prior average level of 55%, *id.*, table 5, at 309. He then points out that “the average decline in the value of tenanted land in the various counties and municipalities after rent reduction was from one-third to one-half as compared with the period before rent reduction,” *id.* at 45 (indeed his more detailed figures suggest declines of 60-70% were common, see *id.*, table 6, at 310), and blandly concludes, *id.* at 46:

While the decline in the value of land made it easier for the tenant farmer to buy land, the landlord's anxiety to get rid of his land also provided a favorable environment for the eventual purchase of land by the Government and its resale to the incumbent tiller in the next stage, the Land-to-the-Tiller stage, of our land reform.

A somewhat dissenting characterization of what might be thought not-too-dissimilar

In Latin America, actual "compensation" schemes in the two instances where sweeping land reform has been undertaken (Mexico and Bolivia) have reflected an uncomplicated version of this view with a vengeance, through simple non-issuance of the bonds that were to have been used to pay the landlords.¹⁴ An even more sweeping view, in terms of underlying legal theory, has been emphasized in some more formal Latin American expressions on the general duty to compensate aliens in cases of expropriation. The *Restatement (Second), Foreign Relations Law of the United States* expresses the established position of the United States that international law requires that "just compensation" be paid upon the expropriation of the property of an alien.¹⁵ "Just compensation" is "adequate in amount" —which in turn, normally means "equivalent to the full value of the property taken"—and is "paid with reasonable promptness," in "a form that is effectively realizable by the alien."¹⁶ But the Reporters' Notes point out that the rule of just compensation is questioned by some Latin American states, both on the basis of the general position that aliens are not entitled to any better treatment than their own nationals,¹⁷ and in terms of the specific contention that "international law imposes no duty to pay compensation when property is taken pursuant to a general program of social or economic reform."¹⁸ Clearly these views carry considerable implication for the theory of compensation to be applied to expropriation of nationals' property as well.

Yet it appears increasingly clear that the points of view which excuse or justify the payment of less-than-full compensation for expropriated land—at least for those who seek tangible results rather than

facts in South Korea is found in Bunce, *Financial Aspects of Land Reform in the Far East*, in *LAND TENURE* 481, 484:

The general terms of the Republic of Korea land reform program were that the owner of the land was given 150 per cent of the total value of one year's crop. In other words, he was allowed 30 per cent of the crop over a five year period. When in the past he had been receiving up to 60 per cent of the crop per year. 30 per cent of the crop for a five year period is almost confiscation.

See also text accompanying note 26 *infra*.

¹⁴ See note 23 *infra*.

¹⁵ *RESTATEMENT (SECOND), FOREIGN RELATIONS LAW OF THE UNITED STATES* § 185 (1965).

¹⁶ *Id.* §§ 187-88.

¹⁷ See *id.* § 165, comment *a*.

¹⁸ *Id.*, Reporters' Note 2, § 185. This and Note 4 point out, however, that all Latin American states apparently accept *some* international standard for compensating an alien, as expressed in their unanimous adherence to a 1962 resolution of the General Assembly which provides for "appropriate compensation, in accordance with the rules in force in the State taking such measures . . . and in accordance with international law." The meaning of the qualifier, "appropriate," and the logical function of the connective "and" are, of course, sufficiently debatable to render this formulation a rather equivocal one.

the luxury of excoriating prose—are utterly self-defeating.¹⁹ The author is willing to concede for purposes of argument all of the moral points that the proponents of such views might score, put them in as overstated a form as you will: that not only some, but all, of the expropriated landlords will not be educated upper-middle class families with children to send to universities and reasonable desires for travel and leisure planned around the value of their landholdings, but, on the contrary, will be (even when they are United States corporations) monsters of iniquity bent upon squeezing every last cent of profit from the crushing labors of ignorant, darker-skinned and utterly impoverished peons.

Conceding all this, I wish to present here a proposal for a markedly different solution from that of uncompensated (or poorly-compensated) expropriation. It is a solution for which I intend to spend much of the next year or two digging out the supporting data, and I am pleased that these pages of the *Review* are now available for an initial exposition of such ideas without all the ponderous apparatus of completed scholarship, which in this case will require considerable field study. Here then is the idea, the framework:

The view that land reform should be carried out with less-than-full compensation of the landlords must be discarded because it will not work, or will not work without an unacceptably high risk of bloody conflict in its implementation.

The holders of *latifundios* in South America still wield considerable political power, both through direct political office and through connections in the army. They thus have considerable power to veto land reform whenever they have the incentive to do so; and the incentive provided by any scheme of inadequate compensation is clearly so great that exponents of such schemes must expect a rather considerable shift in the social-power structure to permit land reform in the form that they propose or espouse it. I regard the subject of land reform as too important to wait for such a shift, and I certainly do not want it—nor, assuredly, do I suppose the authors of the schemes referred to want it—to be accelerated by violent revolution.

What can be done is further limited by the presence of United States corporations as landholders in Latin America.²⁰ Any expropria-

¹⁹ For a discussion of the effect of such points of view as to expropriation and, especially, "creeping expropriation" on foreign investment in less developed countries, see Comment, *Increasing the Flow of Private Funds to the Underdeveloped Countries: A Proposal*, 42 WASH. L. REV. (1966).

²⁰ See Karst, *supra* note 12, at 329:

Not the least of the tensions involved in the formulation of United States

tion without fair compensation affecting their interests would no doubt deeply aggravate the hostility that would be felt by a large segment of our own population towards any foreign government that expropriated property even of its own nationals without paying a fair compensation.

Thus the thrust of a solution which furnishes a workable basis for land reform, it seems to me, must be that it offers compensation sufficiently full and adequate to disarm the opposition—both among the landholders and here at home—of any effective arguments, except perhaps the residual, and politically unappealing, argument that they would lose the brute power represented by the land and the dwellers upon it.

To thus disarm the opposition, and achieve the minimum political conditions for an effective land reform program, I think the following four basic points must be observed:

- (1) The promise to compensate cannot depend alone upon the word of the expropriating authority, since such promises have been violated in the past.
- (2) The measure of compensation must depend upon the value of the land to the present landholders, viewed in favorable, non-coercive circumstances, without downward adjustment to reflect threatened deprivation of benefits or increase of burdens.
- (3) The measure of compensation must be independent of domestic inflationary trends, although this does not preclude deferring compensation or providing for its reinvestment in other domestic undertakings, both of which may be highly desirable.
- (4) Full satisfaction of these conditions appears to require the establishment of an international consortium of the industrialized nations to guarantee the direct obligations of payment to the landlords undertaken by national governments, although the actual outlays of such a consortium, as I hope can be demonstrated fairly persuasively, are likely to remain a very minor fraction of the value of the land expropriated.

(1) *Guarantee of Compensation*: The guiding star for non-revolutionary but effective land reform is to be avoidance of the active, or at least hyper-active, opposition of the present landholding class.²¹ It

policy toward Latin America is antagonism between the need to make radical changes in land tenure structures and the interest of some North American investors in preserving their holdings in land.

²¹ Kling, *Toward a Theory of Power and Political Instability in Latin America*, in MARTZ 132-33, cites an unusually candid reply by the government of Chile to a

is difficult to see how any purely-locally sponsored deferred compensation,²² normally bonds, could be widely acceptable after the Mexican and Bolivian experiences.²³ Perhaps field-study will show the contrary. I am inclined to doubt it.

(2) *Valuation*: This is a thorny problem, but not an insuperable one. Land must presently pass in private transactions on a basis the parties feel is fair (leaving aside, for the moment, the possible question of an "abnormal" market).²⁴ The annual value of the crops to the

United Nations questionnaire as emphasizing "the difficulty of modifying the pattern of land ownership":

"Owing to the economic and political structure of the country, land reform in Chile is difficult to carry out. Landholders who would be affected by any action of an economic, political, administrative, legal, or social nature will vigorously oppose its implementation, and their political and economic influence is very powerful."

Note also the quotations from SZULC, *op. cit. supra* note 10, at 230, 247-48. This gravely troubling book also points out that vast numbers of land-poor peasants have moved to the cities, forming an additional potential for revolutionary ferment in waterless, sewerless colonies of incredible squalor which, as the author at one point remarks, "make New York's East Harlem look like a couch of luxury." *Id.* at 49-54. See International Labour Office, *Why Labour Leaves the Land*, in TWO WORLDS OF CHANGE 163, Table 1, at 170-71, 179 (Feinstein ed. 1964). As to the farm laborers, tenants or sharecroppers themselves, Mr. Szulc, who is Latin American correspondent for the *New York Times*, describes many of them as living in virtual bondage and others as under constant threat of starvation, with per capita incomes quite generally in the range of \$75-120 a year. SZULC, *op. cit. supra* at 54-58.

It is difficult to find words vivid enough to describe the intensity of the need to find legal and institutional accommodations that will allow these countries to undertake programs of basic land reform.

²² Cash compensation for a large-scale land expropriation is rare. It is likely to be highly inflationary, both disrupting the economy and giving the landlords something which plummets in value even as they are all in the act of receiving it in hand. See note 31 *infra*.

²³ In Mexico, only a small fraction of the owners of confiscated land received the bonds that were supposedly to compensate them; and in Bolivia, the bonds authorized by the reform law have never been issued and apparently never will be. See Karst, *supra* note 12, at 340-41 n.53. The Mexican and Bolivian reforms—and the Puerto Rican, discussed *infra*—are the only significant Latin American land reforms (apart from Cuba) to date. These accompanied, respectively, the Mexican Revolution of 1911 and the Bolivian Revolution of 1952, the only two Latin "revolutions," apart from Cuba, that have truly been a "sudden and radical change . . . which struck at the roots of the previous order." Patch, *Bolivia: U.S. Assistance in a Revolutionary Setting*, in SOCIAL CHANGE IN LATIN AMERICA TODAY 108 (Adams ed. 1960). In Mexico, close to 76 million acres were distributed between 1910 and 1945, see WOLF, *SONS OF THE SHAKING EARTH* 248 (1962) (although most of this was pasture and forest land, see note 40 *infra*), and see generally Durán, *Agricultural Co-operation in Mexico in Relation to Small Landholdings*, in LAND TENURE 311-12. While only about 6% of these are estimated to have been distributed *gratis* in theory, under the idea of making restitution of lands unlawfully seized, see Karst, *supra* note 12, at 335 & n.29, the fact that bonds were not issued for the bulk of the land which was in theory being expropriated for compensation may be in large part because, even for that land, that "in the background was the theory of restitution." *Id.* at 337. The Bolivian reform law also made provision for uncompensated restitution of usurped lands, see Patch, *op. cit. supra* at 127, a provision which "in practice, recognized the *de facto* occupations of land which had already been carried out by the *campesinos*." *Ibid.*

²⁴ See 1 BONBRIGHT, *VALUATION OF PROPERTY* 417-19 (1937). On valuation problems generally see also MCMICHAEL & O'KEEFE, *LEASES* 115-25 (5th ed. 1959); ORGEL, *VALUATION UNDER EMINENT DOMAIN* (2d ed. 1953).

landlord—his net return, whether it be in the form of a percentage of crop value collected from tenant farmers or the direct return from sale of crop less wages paid for labor and other expenses of raising the crop—should furnish a helpful guide, although the exact capitalization factor may be troublesome. If the program is bona fide, it should not prove impossible to reach a valuation the landlord will regard as fair.²⁵

The chief things to keep in mind in valuation, it appears to me, are the factors which should *not* affect valuation if the reform is to be accomplished without serious risk of armed conflict:

- (a) The value should not be artificially lowered by adoption or threatened adoption of higher inheritance, property or income taxes.²⁶ Possibly tax changes could contemporaneously occur, if it were clear that they were not specifically aimed at lowering land values preparatory to expropriation. They should definitely not be part of the land-reform "package."
- (b) The value should not be artificially lowered by placing or threatening to place ceilings on rents,²⁷ or price-controls on crops.²⁸
- (c) The reform should not be carried out in the shadow of threats to use other proposed or existing regulatory legislation, such as special eminent domain statutes or statutes relating to taking unused land which, in theory, might "legally" allow uncompensated

²⁵ See note 40 *infra*.

²⁶ But see remarks of Bunce, in *LAND TENURE* 487.

²⁷ But see note 13 *supra*. Note that in Taiwan, a government with assured control over a large (and chiefly non-indigenous) army was able to effect land reform despite this kind of prolegomena.

The Japanese and Korean land reforms were also accomplished under governments operating, then, in the immediate shadow of United States protection.

By contrast, it should be kept constantly in view that, apart from the very special case of the United States commonwealth, Puerto Rico, see generally Rosenn, *Puerto Rican Land Reform: the History of an Instructive Experiment*, 73 *YALE L.J.* 334 (1963), the institutional and political framework of Latin America has thus far allowed sweeping land reform only as part of sweeping revolutionary change, in Mexico, Bolivia and Cuba, and the history of these experiments is likely to make the entrenched interests even more gun-shy than before, see note 23 *supra*. Yet it is precisely the burden of this article that—while Latin America must have land reform, both to alleviate human misery and to build a stable rural middle class as a counteractive to revolutionary pressures—it would be tragic if it could have it only as part of such a sweeping revolutionary change, which today would be only too likely to be Communist or Castroite in nature. Therefore, it would appear to follow that it will be wise to espouse such reforms based on a reasonable accommodation with the entrenched economic interests, one which at the same time is consistent with our own frequently espoused notions of "just compensation."

²⁸ Conceivably, *general* controls on rents or prices could satisfy the proviso stated in the last sentence of (i), but this seems more dubious than in the case of taxes.

sated or only partially compensated taking (including the "creeping expropriation" type of taking) by the government.²⁹

In sum, a fair price should be determined in an atmosphere free from overtones of coercion. If it is made crystal-clear from the beginning that this is how the land-reform program will work, the chances that a strong opposition will coalesce should be significantly reduced.

(3) *Inflation*: the rate of inflation in some parts of the world, most markedly in large parts of Latin America, has ranged from serious to appalling.³⁰ To defer compensation to the landlord normally will mean to give bonds,³¹ and to give 15- or 20-year bonds in 1967 payable in the same amount of currency in 1982 or 1987 is, in many countries, essentially to give nothing in terms of principal, and to give virtually nothing in terms of interest after the first few years.

There is now, however, substantial precedent for issuance of bonds tied to the price of a commodity. To implement land reform in Taiwan, two series of bonds were issued, payable in terms of future monetary value equivalent to the cost, at that future date, of a stated quantity of rice (and, to some extent, payable in rice itself rather than the monetary equivalent) or sweet potatoes, respectively.³² In Korea, the bonds were payable in terms of the monetary equivalent of a stated quantity of rice.³³ In the very limited program in Columbia, mortgage

²⁹ But see material cited at note 13 *supra*.

³⁰ General consumer price indexes in 1963, based on 1958 = 100:

Brazil:	675
Argentina:	491
Chile:	274
Colombia:	164
Bolivia:	152

On the other hand, Mexico was 111, Venezuela was 106, Ecuador was 115, and most Central American countries' prices were quite stable.

While the Vietnamese war has probably accelerated some of the inflationary movements in Asia, the 1958-1963 figures there are a little more encouraging. India, the Philippines, Pakistan and Thailand had price increases ranging from 5% to 17% during these periods. Indonesian prices, however, went up 12 times over.

Figures are from STATISTICAL YEARBOOK OF THE UNITED NATIONS 1964, consumer price index tables at 520-26 [hereinafter cited as YEARBOOK].

³¹ See Galbraith & Morton, *Problems of Financing Land Distribution*, in LAND TENURE 492, 496-97.

In Japan, "the postwar inflation ... made the price of the land very cheap." Owada, *Land Reform in Japan*, in LAND TENURE 219, 222. Bonds were issued, but the price of brown rice—the staple commodity—reflecting inflationary pressures, increased more than tenfold within two years. *Ibid.*

To pay cash is normally simply to resort to the printing press, and thus to ensure the prompt deflation of the payment given. Bonds are the generally recognized currency of land reform, although there are important secondary questions—such as negotiability, or partial negotiability, *e.g.*, for purposes of investing in basic domestic enterprise, versus non-negotiability—which are briefly dealt with in the next section.

³² See text accompanying note 40 *infra*.

³³ See Bunce, *Financial Aspects of Land Reform in the Far East*, in LAND TENURE

instruments payable in fixed amounts of coffee have apparently been used.³⁴

A single commodity may not be enough, however, especially if it is one whose real value depends not on an essentially inelastic domestic consumption market, but on the vagaries of world commodity prices.³⁵ A general price index may therefore furnish a preferable guide. Indeed, a recent Chilean constitutional amendment provides for "a system of annual readjustment of the balance of the compensation, with the object of maintaining its value."³⁶

There thus seems strong reason, if the bonds issued to the land-owners are to be fully compensatory, to tie them to a broader general-price index.

(4) *Method and Cost:*

481, remarks at 486. The author states that "this solution was an important factor in persuading the landlords to accept the land reform program," *id.* at 486, although he had earlier conceded that given the overall payment calculation the taking was "almost confiscation." See note 13 *supra*.

³⁴ See Galbraith & Morton, *op. cit. supra* note 31, at 492, 496.

³⁵ The value per unit of Latin American agricultural exports in 1959-1961 was only about three-fourths the value per unit of those same exported products in 1952-1953. (Although the quantity of exports increased as an offset—but this introduces a number of possible new variables, such as increase in amount of land under cultivation, or more intensive cultivation of existing land accompanied either with greater use of fertilizers or with depletion of the soil: it would thus seem on a preliminary view that fluctuations in value per unit of the crop produced may be a fair way of predicting the fluctuations in value of the land, to the extent that units of that crop are taken as the sole measure of the land's value. That is to say, only the per unit value and not the possible *increase* in units produced per acre need be considered as a *primary* determinant of value.) See III PROCEEDINGS OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT 254-55 (1964) [hereinafter cited as PROCEEDINGS]. The 1959-1961 export unit price of coffee was 64% of the 1952-1953 price. Cereals were 72%, cotton was 70%. *Ibid.* See also YEARBOOK 499, at subtable 17. Sugar has, of course, been another product subject to drastic price decline.

50% to 60% of Brazilian exports consisted of coffee, over 70% of Columbian exports were coffee, and coffee accounted for 56% of the exports of the Central American republics as of the middle of the last decade. Kling, *Toward a Theory of Power and Political Instability in Latin America*, in MARTZ 130, 133. Coffee, or other export crops, need not, of course, constitute the basis on which "commodity bonds" are made payable. For a detailed account of the problems of the "coffee economy," see FURTADO, *THE ECONOMIC GROWTH OF BRAZIL* (1963).

³⁶ Karst, *supra* note 12, at 339 n.44. See generally Comment, *The Chilean Land Reform: A Laboratory for Alliance-for-Progress Techniques*, 73 YALE L.J. 310 (1963). It has been suggested that, as between general-price-index "purchasing-power" bonds and ones repayable in terms of particular principal crops, "the latter would be simpler to administer and easier to understand." Galbraith & Morton, *op. cit. supra* note 31, at 492, 496.

The relative desirability of the two types would seem to me to turn on (1) whether a well-kept general price index is or can be made available, and (2) whether the crop which is the alternative benchmark is one subject to value fluctuation of a significant nature in relation to what available data show to be the general cost of living. If the answer to (2) is "yes" and the trouble is in (1), the institutional machinery suggested at text accompanying note 37 *infra* may well be able to solve this very limited problem. Thus, I am unimpressed by the objections and inclined to think the presumption should lie in favor of compensating the former landlords through general-cost-of-living bonds.

(a) *Method*: At the heart of the present proposal for viable land reform is the idea that supplementary activities of a financially strong and politically trustworthy outside agency are necessary to insure that standards of just compensation will be met. Meeting the condition set forth in (1) above clearly requires, and credible assurance of the implementation of (2) and (3) reasonably calls for such activities. The most logical way to carry them out, and to spread the risks involved in them, would seem to be through an international consortium of developed countries, which would in effect subscribe to the capital of an international insurance corporation formed to underwrite the obligations of the country undertaking land reform towards the holders of its land-reform bonds.

That such an international guaranteeing consortium should be created to aid in accomplishing land reform is the central point of the present article, coupled with the proposition that *what* the consortium guarantees will be an obligation which fully reflects the standards of just compensation.

Quite possibly such a multilateral insuring activity for Latin American land reform could be tied to the Inter-American Development Bank or operate within the framework of the Organization of American States. Effective multilateral participation by high-level officials of the Latin nations from the earliest stage would seem highly desirable.³⁷

(5) *Cost*: If such an agency insists on certain minimal safeguards in the land-reform program, it would seem as a matter of preliminary judgment that the costs to the underwriters should not be a large proportion of the cost of the whole program: on the order of a few percentage points of the value of the land being transferred. There are, however, ancillary costs which should probably be subsidized by the consortium as part of a successful total program.

In Formosa, land reform was accomplished by paying the landlord two and one-half times the annual value of the main crop.³⁸ On this

³⁷ Cf., e.g., SZULC, *op. cit. supra* note 10, at 258-65. This would include the stages at which decisions were made on the particularity with which standards of compensation, priority of taking of land, minimum and maximum sizes of holdings and on other important questions were to be spelled out as part of the "insurance contract" versus the extent to which such "interstitial" matters were to be left up to the particular countries themselves. In general, the fuller the participation of the affected nations the more possible it should be to reach accords on at least meaningful minimum standards for resolution of such particular matters.

³⁸ See CHEN CHENG, *op. cit. supra* note 13, at 78.

Quite possibly, some *minimum* standard for valuation of the land taken can be built into the international guaranty program, with actual variations to be worked out on a local basis. If, for the moment (and remembering that the prior "rent reduction" might affect our figures by as much as a factor of 2) we lean on the Taiwan experience, a figure for tenanted or share-cropped land of $2\frac{1}{2}$ times annual

basis, 344,000³⁹ acres of land were purchased by the Government, chiefly with 10-year bonds bearing 4 per cent interest. The principal

crop value or 6 times annual rental (if annual rent ran in the region of one-half annual crop value, as in pre-reform Japan, see Owada, *Land Reform in Japan*, in LAND TENURE 220, Korea, and Taiwan) might develop as a minimum standard. In India, compensation was varied according to the size of the parcel, with the biggest landowners given 3 times the annual rent and the smallest 30 times the annual rent. See remarks of Dantwala, in LAND TENURE 490. Land values in various regions may, of course, reflect population densities and the intensely practical fact whether land ownership may be an assurance against a serious threat of, literally, starvation.

The Indian discrimination according to size of holding clearly seems of a piece with the views earlier described on effecting less-than-full compensation. Indeed, the Indian delegate whose informal remarks are reported at the page cited then commented that "You will observe probably that this very small compensation [i.e., of the big owners] is not much different from confiscation," but then attempted to justify it by the alleged dubiety of the "ownership rights" of the big landholders. *Ibid.* Compare note 23 *supra*.

However, there might be difficulties in applying *only* a capitalized-earnings standard and achieving any acceptable valuation for the "*hacienda*" type of *latifundia* holding, which tends to be the polar opposite of the "plantation" type. The latter is capital-intensive, producing cash crops often for export and often employing laborers for a cash wage, a kind of "agricultural factory." The former tends to be the personal fief of a socially prominent family—although they may be frequently or permanently absentee—and to be characterized by inefficient methods, low-capital-investment, and a total production which does not reflect the full capacity of the land, often being hardly above a subsistence level. See Tannenbaum, *The Hacienda*, in MARZ 27-34; Karst, *supra* note 12, at 346-56. Present Latin American statutes which describe the land available for expropriation tend to focus on inadequately cultivated or inefficiently operated land. See *id.* at 349-50.

Professor Karst suggests that one acceptable mode of "confiscation" of the socially non-utilitarian *haciendas* may be to give compensation on the basis of capitalized current earnings, without regard to potential earnings or, apparently, to transactions in the land market which might reflect that potential. See *id.* at 356-72, especially at 369-72. (I would assume that he would also accept a very low capitalization factor—see his approbatory references in this context to "The pretense that compensation is being made" and "the myth of compensation," *id.* at 371, a pretense or myth which he supports as helping to assure the *campesinos* of their good title and to maintain social order in such a "social revolution." *Ibid.*)

The program suggested in the present article does not, in itself, purport to lay down any requirements as to the order of selection of lands to be expropriated (although almost any application of a "fair value" or "just compensation" requirement might have some influence in suggesting the priority of the expropriation of the *hacienda* over that of the plantation-type of operation), so that choosing the *hacienda* as the first to go is fine. But any suggestion for compensating the *hacienda* holders on a basis which clearly—and deliberately—ignores value-factors which are likely to be relevant to the owners and to have at least some recognition in any land-market transactions, is thoroughly inconsistent with the basic premises of the present article. If we are to be realistic about having non-revolutionary land reform in Latin America, we must be willing to accept a figure which encompasses a fair valuation of the complex of factors which comprise the *hacienda*. Earnings may be a highly significant factor in this valuation process, but to limit ourselves rigidly to capitalized earnings here is probably, putting it simply, to make non-revolutionary land reform impossible. The *minimum* figure based on capitalized earnings thus becomes a floor upon which the further processes of local accommodation and conciliation to be developed under the overall guarantee program—apart from the question of how particularly they are to be spelled out in the insurance agreements themselves—build a final valuation which, while it may not satisfy the landlord entirely, does not dissatisfy him sufficiently so that he attempts to use his existing political power to destroy the program. The minimum figure and the prospects and goodwill for building an acceptable final figure must, of course, be attractive (and apparent) enough from the beginning so that the landlords do not collectively block the program *ab initio*.

³⁹ See CHENG CHENG, *op. cit. supra* note 13, at 76.

was payable in the cash equivalent, at time of payment, of 1.26 billion kilograms of rice and 440 million kilograms of sweet potatoes (although some of the rice bonds allowed payment in kind); the interest was similarly payable in terms of quantities of rice and sweet potatoes.⁴⁰

⁴⁰ See *id.* at 75-77, 217-18, 321-24. The bonds were redeemable in 20 semi-annual installments.

Calculating a value per pound of roughly 6 cents for rice and sweet potatoes, see PROCEEDINGS 292-93, this indicates a total payment of about \$200 million in bonds. In addition, 30% of the purchase price was paid in "government enterprise stock shares," *id.* at 75, which leads to calculation of a total "price" of about \$800 per acre (this compares well with a \$700 per acre figure which can be calculated for public lands sold to the peasants, from the figures in *id.* at 311). If the choice of the 2½ times-main-crop-value figure, and the resulting \$800 per acre calculation were about proportionate to the decline in value of farm land, as measured by open-market sales, after compulsory rent reduction (to 37%), and before the acquisition program, see note 13 *supra*, the figures suggested for a "normal" market would seem closer to 5 times the annual value of the main crop, or about \$1600 an acre. On the other hand, Formosa has one of the highest population densities in the world, over twice that of India. See YEARBOOK 33. Even in Puerto Rico, with a population density nearly as great (density figures, incidentally, which are about 15 times those for the United States and Mexico and about 30 times those for nearly all of South America, *id.* at 29-32), costs in the land reform program apparently ran—although in terms of 1940's prices—about \$150 per acre. See Rosenn, *supra* note 27, at 340 n.37.

Even in rich farming areas like Iowa, average values for United States farmland today do not run much above \$250 per acre, including buildings. See STATISTICAL ABSTRACT OF THE UNITED STATES, table No. 875, at 615 (1965).

In Brazil, the total cropland—exclusive of grazing land—amounts to about 2% of the country's area, or less than 50 million acres. In Argentina, it is under 70 million acres. In Columbia, under 7 million acres; in Peru, under 6 million; in Chile, under 1 million; in Ecuador, under 3 million; in Venezuela, again, under 3 million. See COLE, *op. cit. supra* note 9, at 129. If we assume that one-half the existing cropland will be affected by sweeping land reform (in Mexico, it was claimed that about 23% of total area holdings was distributed to *ejido* farmers, but only about one-quarter of the land distribution was cultivated land, see Kling, *Toward a Theory of Power and Political Instability in Latin America*, MARTZ 133; Durán, *Agricultural Co-operation in Mexico in Relation to Small Landholdings*, in LAND TENURE 311-12) this suggests that comprehensive land reform in the major countries of Latin America (excluding Mexico and Bolivia, which have already undertaken broad land reform) involves only about 75 million acres of land. At a cost of \$200 per acre (which is probably an excessive estimate), this would indicate a total cost for the land involved of about \$15 billion. The land cost figure is probably excessive, but given related costs (incidental equipment, seed-and-fertilizer loans, etc.) let us take \$15 billion as a very tentative "ballpark" figure for the basic land reform program. When compared with the 10-year outlay by the United States alone—outlay in its entirety, without repayment—of some \$10 billion projected for the Alliance for Progress, see, e.g., SZULC, *op. cit. supra* note 10, at 241-42, an overall figure of anywhere around this order of magnitude, most of which will not even have to be paid out, as discussed at text accompanying notes 41-55 *infra*, does not seem excessive. Indeed, it seems so small in terms of the sweeping social and political purposes which are the goals of land reform that it seems quite incredible that such a scheme is not long under way!

It might be noted that 75 million acres would suffice to give 35 acres of land, the minimum finally set as viable in the Puerto Rican reform after earlier experimentation with a 25 acre minimum, see Rosenn, *supra* note 27, at 340, to over 2.1 million families. On the basis of around 6 persons per family (see YEARBOOK 652-69 for partial figures on the average number of persons per household in Latin America) this would account for around 12 million persons, or roughly 10% of the population of the countries named. Actually, the land distribution in Mexico was on a basis of about 10.4 acres of cropland per family, see WOLF, *op. cit. supra* note 23, at 250,

Whether under particular circumstances, the price paid in "cost-of-living bonds" by the local government for land was \$100 or less per acre or \$600 or more per acre, the chief compensation for the price

and in Taiwan, where rice paddies were involved, it was only about 1.8 acres, see CHEN CHENG, *op. cit. supra* note 13, at 82, so that a middle ground might suggest a figure of perhaps twice the 2.1 million family figure. In the promising but relatively small-scale Venezuelan program (Venezuela has, of course, far greater internal financial resources than other Latin American countries), 33,000 families had been settled on expropriated *hacienda* land by the end of 1963, at an average cost—for the land and improvements—of about \$1,800 per family. With respect to the most important variables affecting the significance of this figure: (1) the statutory priority was given to acquisition of non-fully-exploited land; (2) land-valuation was to take into account the last six years of production, tax value, and acquisition price of the same or neighboring land, plus the value of improvements; and (3) size of a family's holding was to be such as to permit their continuing economic progress but not to require much non-family labor. Thus, each of these variables may suggest some reduction from a "normal" acquisition price in the terms envisioned by this article, but their cumulative effect does not seem such as to suggest that the \$1,800 figure is far below what would be expected under the suggested program. Thus, even if we were to double it, to take account of possibly better land, higher valuations and greater acreage per family, such an extrapolation from the Venezuelan experience would suggest that, for the \$15 billion, land could be distributed to over 4,000,000 families (\$15 billion divided by \$3,600 per family). The Venezuelan data and provisions are taken from United Nations Dep't of Economic and Social Affairs, *Progress in Land Reform* 4th Rep. 6-11, E/4020/Rev. 1 (1966).

It is therefore entirely conceivable that a program involving the actual outlay of only a small fraction of \$15 billion or thereabouts could result in a sweeping land reform that would place close to half the rural population of Latin America on its own land.

Still another method of calculation tends to confirm that the \$15 billion figure is a "ballpark" figure (if it were \$20 billion or \$25 billion my conclusions would not be appreciably different). As noted above, about one-third of the total cropland, or about 50 million acres, is in Brazil. A rough figure for the cost of the Brazilian cropland to be acquired as part of a program of comprehensive land reform can be developed as follows:

Following are the chief products of Brazilian cropland, as taken from YEARBOOK 128-47, together with the export value calculated for the entire crop, as derived from United Nations, YEARBOOK OF INTERNATIONAL TRADE STATISTICS 1963, at 88-89 (using Argentine figures for unit export value of wheat, and assuming potatoes—which rarely are exported—to have about the same value as corn; the total sugar figure has been estimated from export quantities only; small quantities of soybeans, palm kernels, and groundnuts have been excluded):

CROP	QUANTITY (1000 metric tons)	CALCULATED VALUE
Wheat	500	\$ 32,000,000
Corn	8,000	320,000,000
Rice	5,500	473,000,000
Potatoes	1,200	48,000,000
Cocoa beans	140	70,000,000
Tobacco	200	110,000,000
Sugar	1,000	90,000,000
Cotton	650	330,000,000
Coffee	1,600	1,100,000,000
		<hr/> \$2,573,000,000

Excluding coffee (and, as initially, grazing land and livestock production), the total value of all crops of Brazilian cropland thus is indicated as being around \$1.5 billion. The nature of the *hacienda* strongly suggests that we are dealing here with the products of virtually all *latifundia* of that type, plus a goodly number of the more intensively farmed plantation *latifundia* (particularly for cotton, tobacco, sugar and cocoa beans), and almost certainly are dealing with the bulk of total cropland ("There is a tendency to exaggerate the importance of the special crops

paid would normally be expected to come from the purchase price paid by the tenant-farmers and farm laborers who wished to buy and own the land.⁴¹

Even the total amount changing hands, while substantial, would

such as sugar, coffee, and cotton, and to forget that most of the crop-land in Latin America is used for the cultivation of such food crops as maize, tubers, beans, and rice, which are the main items of diet for most of the inhabitants," COLE, *op. cit. supra* note 9, at 132).

If we then make the assumption that our comprehensive land reform in Brazil will encompass *all* of the land *except* that devoted to coffee and that devoted to sugar and cotton, we arrive at an annual crop-value figure in the region of \$1 billion for *all* of the land involved. If we then apply the 5 times gross-crop-value figure as the capitalization factor (recalling the 5 times annual crop value figure suggested earlier in this footnote, based on the Taiwan experience; note that this would seem quite in line with capitalization rates for United States commercial properties, see ORGEL, *op. cit. supra* note 24, at §185), we thereby derive a preliminary valuation of \$5 billion for all Brazilian land to be distributed in comprehensive land reform. It will be recalled that Brazil accounts for about one-third of the Latin American total. "Q.E.D."

With relation both to cost and to the question of political viability, it might be noted that landlords would probably be allowed to retain the existing manor house and a surrounding plot of land—perhaps limited to 10% of the present holding and also by some further factor to define the maximum permissible retained holding. Again the question would arise whether this should be provided for, at least in terms of a fairly liberal maximum (*e.g.*, 1000 hectares, about 2400 acres) within the framework of the multilateral guarantee consortium, or should be left up to the individual participants.

I am at this stage of the proposal deliberately ignoring the important administrative question of how one might go about establishing the actual production of a given *hacienda*—quite possibly, certain presumptively "normal" figures could be established for certain regions and types of operations by the administrators (note the detailed account in CHEN CHENG, *op. cit. supra* note 13, of the valuation classifications and procedures in Taiwan); and the combination of this with open-market transactions for comparable land, existing books of the enterprise and cooperative *campesinos* should go far towards solving the mechanical and evidentiary end of the valuation problem.

One last point concerning cost is the matter of debt interest. Assuming issuance of bonds at roughly 5 times crop value, and assuming further that this would constitute about 10 times the normal net return on crop (this would be the case where a tenant farmed the land, paid the expenses, and turned over half the total crop to the landowner), a 10% interest rate would duplicate the landlord's current annual income. However, it would seem that a rate of around 6% would be quite fair, and would compare favorably with existing Latin American interest rates which are calculated on a basis, unlike interest on the land-reform bonds, which would be fully subject to inflationary pressure. Recent central bank interest rates, on an inflation-subject basis, have run about 8% in Columbia, 12% in Brazil, and 15.8% in Chile. See Wall Street Journal, Oct. 4, 1966, p. 1, col. 6. To make the 6% rate more fully comparable with the present income of the landowners, it may be that participating governments should be encouraged—or even required as part of the guarantee program—to exempt interest on the land-reform bonds from all taxes so long as the bonds remained in the hands of the original holder or the heir or legatee of a deceased original holder. Further "sweetening" might be provided through the equity-participation aspects of the proposal in footnote 55 *infra*. (The "second-layer" bonds issued under such a proposal would, presumably, also be afforded the benefits of tax exemption.)

The further complications arising from the possible need to operate some lands in a broader, cooperative fashion to make them economically viable will not be dealt with here. The legal techniques suggested in the present article do not, of course, commit the reformers to land distribution on any rigid one-man one-farm basis, but the problem is sufficiently closely related in a practical sense that the author intends to include further consideration of it in a later article. See generally

quite probably not be exceptional in terms of existing aid programs.⁴² But most of it would ultimately be recovered in the form of a payment to the government by the new owners of part of the surplus created by their capital and labor, which formerly went to the landlord as the tenants' crop-sharing payment or as the landlords' profit on the labors of the salaried workers. The government in turn would have paid an approximately equivalent sum to the landlord. Amortization of the bond indebtedness through such repayments by tenants was virtually on a one-to-one basis in the Formosan reform,⁴³ and obtaining primary repayment from the new cultivator seems generally both feasible and desirable.⁴⁴ It has been suggested that the price to be paid by the new owners may be "considerably different" from the price paid the landlord,⁴⁵ but at least in the setting of the present proposal, this difference may well be minimized. In the first place, the likelihood that the *hacienda* type of non-intensive operation will

Digby, *Co-Operatives and Land Use*, FAO Agricultural Development Paper No. 61 (1957); see also Rosenn, *supra* note 27, for a description of the tiny *agregado* holding and the "proportional profit" type of collective, patterns somewhat different from the tiny subsistence-level *minifundia* and the Mexican-type collective, the *ejido*, which sometimes seem the only alternate patterns offered. The Puerto Rican experience with 35-acre tracts has been referred to in footnote 40 *supra*.

With respect to the *hacienda* type of operation, it may be worth noting that many of these have attached to them today highly integrated communities which should be several steps towards the creation of cooperative-type farming arrangements, if this is desirable. See Tannenbaum, *The Hacienda*, in MARTZ 27-28.

Even in those areas of Latin American where there is considerable undeveloped land, see generally COLE, *op. cit. supra* note 9, fig. 13, at 131, the handing over of existing estates, with priority given to those who presently work them as tenants or as labor, seems a considerably better alternative than attempting to develop new public lands, with the vast improvement expenditures and the great time lag this would entail, as well as the immense difficulties involved in uprooting and reorganizing existing *campesino* communities. See Karst, *supra* note 12, at 364; Carroll, *The Land Reform Issue in Latin America*, in MARTZ 178-79. But cf. Galbraith & Morton, *op. cit. supra* note 31, at 495, 499, which tends—without reaching any conclusion—to emphasize the relative-cost factor and to de-emphasize the time and social factors. See also note 55 *infra*.

⁴² See note 40 *supra*.

⁴³ See CHEN CHENG, *op. cit. supra* note 13, at 78. The purchase price, like the price paid the landlords, was calculated at 2½ times the main crop yield, and was repayable in 20 equal installments over a 10 year period, the latter also being the maturity period of the bonds issued to the ex-landlords.

⁴⁴ See Galbraith & Morton, *op. cit. supra* note 31, at 492.

⁴⁵ *Id.* at 494:

The cost of land to the government depends on the price paid to former landlords or on the costs of preparing the land for distribution out of the public domain. The price which the new farm owners can afford to pay may be considerably different. Also, it may be the aim of public policy to sell the land to farmers at a subsidized price, if the society is rich enough to shift this burden to the general public.

It should be noted that the sudden accession of purchasing power in the hands of *campesinos*—if payment is arranged so as to lead to a large, abrupt increase in their nominal cash income—might prove almost as inflationary, and hence almost illusory, as an attempted "compensation" of the landlords in cash. See Note 31, *supra*. (I am indebted to Philip French of the University of Washington Business School for this suggestion.)

be the primary source of the land to be redistributed⁴⁶ suggests that a sharp decline in level of cultivation is improbable. In Formosa, where non-complexly-organized rice paddy hand-farming was principally involved, productivity per unit of land rose by about one-fifth when rents were reduced to 37.5 per cent, and rose by another one-third when the land was distributed.⁴⁷ In the second place, reflection on the figure suggested as being tolerably within the normal valuation range (five-times gross crop value)⁴⁸ will show that a *campesino* who has been paying anywhere near half the crop value to the landlord (or, if a laborer, letting the landlord retain half or more of the crop value) should be able to pay off the full value of the land, with 6 per cent interest,⁴⁹ in a little over 10 years, without suffering any loss in

⁴⁶ See note 40 *supra*. See also note 55 *infra*.

⁴⁷ See CHEN CHENG, *op. cit. supra* note 13, at 313. In Mexico, total agricultural production (which may, of course, reflect a number of variables other than land reform), "has been growing (1952-1959) at the remarkable rate of 7.1% per year, far outstripping growth rates in countries that have superior land resources, such as Argentina and Chile." Karst, *supra* note 12, at 359 n.120. Longer-term deficit problems may certainly arise, but appear likely to be related to the separable problem of population growth (although, from a Malthusian standpoint, temporarily increased prosperity arising from land reform might well give rise to the planning of larger families, and it would seem well not to forget this different, but equally critical, problem). See WOLF, *op. cit. supra* note 23, at 250; Wall Street Journal, Sept. 12, 1966, p. 14, col. 4-5 (serious Mexican food shortage predicted by 1975, when population will be 50% greater than today).

ARDREY, THE TERRITORIAL IMPERATIVE 113-16 (1966), has some interesting observations on the views of the so-called "new biology" on the relation between man's instinctive attachment to a piece of territory and the productivity of owner-worked farmland, in the context of comparative United States and Russian agricultural achievements. After noting that in the United States "one worker on a farm produces food for himself and for almost twelve more in the city," while in Russia the same ratio is only one-to-one, Ardrey states, *id.* at 114-16:

The smallness of American farms is among the best-kept secrets in the arsenal of American power. The Soviet Union's collective farms, in which workers shared until 1966 nothing but surplus earnings, average 15,000 acres, each with about 400 families. The state farm, hiring all workers at a fixed wage, averages 70,000 acres and employs 800 workers. Yet of America's two and one half million commercial farms, only one in ten is over 500 acres. The average number of workers, including the farmer and his sons if he has any, is five. Despite those advances in farm machinery which permit a worker to cultivate an acreage far greater than in Lincoln's day, still half of our farms are no larger now than then. The factory-in-the-field exists, but it is of minor significance. The American agricultural miracle has been produced by a man and his wife with a helper or two on a pair territory....

From the days of Stalin's enforced collectivization of the land, the peasant has been permitted to retain a tiny private plot for family cultivation. It is the last bedraggled remnant of the pair territory in the Soviet Union, and in times of political crisis and ideological pressure its size has been reduced. Today the private plot averages half an acre in size, but there is little likelihood of further reduction. Without it Russia would starve.

Private plots occupy about 3 percent of all Russian cultivated land, yet they produce almost half of all vegetables consumed, almost half of all milk and meat, three-quarters of all eggs, and two-thirds of that staff of Russian life, potatoes.

⁴⁸ See note 40 *supra*.

⁴⁹ Possibly interest on the debt of the buyer should be less than that paid on the debt owed the ex-landlord. If so, this might be another area in which the interna-

income. Since, however, it would be an important part of the land reform program to improve his income immediately, a substantially lower repayment schedule over a longer period, say 15 or 20 years, would seem desirable.⁵⁰

There appear to remain only two main areas of potential "slippage" between these payments—*campesino*-owner to government and government to former landlord—which would be subjects for payment by the international guaranteeing consortium and potential sources of cost to it. First, the landholder would probably, for reasons developed above, be paid interest and principal in cash amounts which reflected the general inflationary trend in the country's economy. The land purchaser, by contrast, might well be expected to pay in installments which were tied to the value of the main crop of the land. If, for example, the landlord were to be paid in installments equal to the current value of 5 pounds of each of 20 basic commodities listed on a government index (sugar, rice, wheat, coffee, butter, corn, etc.), the value of this 100-pound assortment of goods might be 17 units of local currency, versus a value of 10 units for the same assortment when the bond was issued. On the other hand, the land-purchaser might have undertaken a coordinate obligation to pay an installment equivalent to the value of 50 pounds of coffee, which reflected the fact that, at the time he entered his purchase contract, 50 pounds of coffee were worth 10 units of the local currency. But despite the

tional guarantors should subsidize the reform program. If a \$15 billion indebtedness is assumed, see note 40 *supra*, the difference between, say, 6% interest paid to the ex-landlord and 4% paid by the new owners, calculated on the total amount, would be \$300 million annually. Such a subsidy might also be necessary if the money paid into the sinking fund could not earn as high a rate of interest as that being paid on the ex-landlord's bonds. See note 54 *infra*. It might, of course, be necessary to retire at least part of the bond issue—say one-half, in the terms of the example in note 55 *infra*—through payment of annual installments of principal in order to achieve an adequate degree of palatability to the landlords (less likely if the bonds are negotiable, certainly to the degree the market holds up, although this would not be a demonstrable fact when at least the initial bond issues had their "terms and conditions" fixed—again, see note 55 *infra*). If so, the sinking fund payments in part would simply move through the depository as a conduit to the ex-landlords.

⁵⁰ Any plans for immediate income-improvement would, of course, have to keep clearly in view the inflation problem referred to in note 45, *supra*. As pointed out in note 55 *infra*, it might well be that a substantial proportion of the ex-landlords' bonds also bore maturities of more than 10 years. Assuming, however, that they all bore 10-year maturities, the result of spreading the buyers' sinking-fund payments over a longer period might be that the consortium would have to advance a portion (up to half) of the land repayment price to the local government against the continuing obligation of the new owners to repay. However, if the bonds had proved desirable holdings—and 6% inflation-proof bonds thus guaranteed, if negotiable, might indeed turn out to sell at a premium on the open market—it might well prove possible to refinance most of the debt with a new issue of similar bonds to the existing holders. A 10-year initial maturity, in other words, would only have been chosen in deference to some putative "gun-shyness" of the initial holders.

greater general inflation, 50 pounds of coffee are now worth only 14 units of the local currency, or perhaps are worth only 9 units, due to a collapse of export prices. If the *campesino*-owner's obligation is measured in the value of some general cost-of-living index, he may bear the brunt of "slippages" between the index and specific commodity prices which represent his own actual livelihood. This seems highly undesirable if lasting land reform is to be achieved, rather than a cycle of bankruptcies and return to former owners or to the government as a kind of superlandlord. However, if the *campesino*-owner's obligation is to be measured in units of the main crop of his own land, he only pays 14 (or 9) units of the local currency to the government, which pays out 17 to the ex-landlord bondholder. It would appear an appropriate function of the international insuring consortium to make good, without reimbursement from the local government, the difference due to this kind of "slippage." It would seem that a guaranty against this kind of risk would help to make land reform palatable to the government, as such, as well as to the landlords. This seems especially so since risks of this kind of relative price decline seem generally greater for export-commodities,⁵¹ and it is proposed consortium members who would bear much of the onus in the eyes of the local government if such a decline took place.⁵² Indeed, the existence of the insuring obligation might lend to a stimulus to joint programs for stabilization of basic commodity prices.⁵³

The second major area of potential liability of the insurers would be default by the land-buyers. Each year a certain number of new owners could be expected to go under (field research might help considerably in predicting how many), but in general it would be expected that

⁵¹ See not 35 *supra*. With reference to the textual example, if, *per contra*, the particular commodity grown on the land outdistanced the general index (the stated number of pounds, let us say, had gone in value from 10 units up to 19 units of the local currency), the new owner's obligation should probably be, by a parity of reasoning, to pay 19 units: in return for not bearing the brunt of disadvantageous relative price fluctuations, he would give up the windfall of advantageous ones during the period of repayment. Most fluctuations in commodity prices would thus turn out to be mutually cancelling as far as actual outlays by the guarantors were concerned.

⁵² See, e.g., Pincus, *What Policy for Commodities*, 42 FOREIGN AFFAIRS 227 (1964), in which the author reviews the problem of price declines in the commodity exports of the developing nations and discusses the position sometimes put forward by representatives of the latter that "the only thing that is lacking is willingness on the part of industrial nations to cooperate" in stabilization agreements. *Id.* at 232.

⁵³ See generally PROCEEDINGS. The problem referred to in text might be lessened to the extent that the effect of making the *hacienda*-type establishments the primary source of land acquired for redistribution was also to make the new owners' obligations to repay chiefly expressible in terms of basic domestically-consumed commodities. However, even commodities like rice have suffered some fairly substantial changes in export value. See *id.* at 293, table 4.1/1 (25% decline in export value of rice from 1948-1950 to 1960-1962).

a new *campesino* could be found to assume the obligation to purchase the land. In a few cases, such a buyer might not be found, or might be found only at a substantial discount (there might also be some cases where no initial buyers at the "fair value" determined for the land could be found). Widespread flooding or erosion might bring about such a situation on a regional basis. Thus a second function of the consortium would appear to be to insure against losses actually suffered by the local government due to purchasers' defaults in payments including, in effect, insurance against major natural catastrophes bringing about such defaults.⁵⁴

Thus the mechanism of joint developed-country guarantees or "insurance" could be expected, at what would appear to be relatively little cost to the guarantors, to add immensely to the local political credibility and viability of any land reform program.⁵⁵

⁵⁴ Normally all purchasers' payments would presumably channel into a sinking fund to be used for retirement of the bonded indebtedness to the landlords, which would of course be the primary obligation of the local government, and only secondarily the obligation of the international guaranteeing agency. Thus what the text suggests is an obligation of the guarantors to make good any deficit in such payment actually resulting from purchasers' defaults which had reached the level of recognizable bad debts (quite possibly to be defined with particularity as part of the guarantee "contract") without any obligation on the part of the primary obligee—the local government—to reimburse the guarantors. However, with respect at least to defaults occurring for reasons other than sudden natural calamities, it might be well to compensate the local government on something like a 90-10 or 80-20 basis; that is, have the latter be responsible to reimburse the guarantors for 10% or 20% of the amount in default, in order to assure local diligence in limiting the net defaulted amount. Presumably the more concrete the safeguards of such diligence which could be spelled out as part of the basic arrangements between the guaranteeing agency and the local government, the lower would the local governments' share in the "co-insurance" feature have to be. The presence and size of this co-insurance feature might also have importance in determining the extent to which the *hacienda* was given priority over the high-value, complexly organized plantation in the land-acquisition plan, since the likelihood and the magnitude of possible new-owner defaults would probably be predicted to be significantly related to the expropriation "mix." See also note 38 *supra*.

⁵⁵ A number of "second-layer" proposals probably should be considered to allow the channeling of as much of the consideration received by the former landowners as possible into industrial development—the *patrons*, that is, should be transformed into industrialists—through encouraging or requiring the investment of a substantial portion of the proceeds in internal development projects. See Bunce, *op. cit. supra* note 26, at 484-85. In Taiwan, it will be recalled, 30% of the value calculated for the land was paid in shares of development enterprises. These were stocks of four government enterprises, operating in the cement, pulp and paper, industrial and mining, and agriculture and forestry development fields, respectively. See CHEN CHENG, *op. cit. supra* note 13, at 77.

One possible proposal might be as follows: On the assumption of basic payment in 6% cost-of-living bonds (see note 40 *supra*), one half of the bonds issued would be of 10-year maturity and freely negotiable, although they could if the holder desired be invested in the same way as the other half of the bonds. The latter would bear the same interest but would be of somewhat longer maturity and would be required to be contributed to the capital of any one of a series of development corporations formed by the government, probably, within overall limits, in whatever proportion the holder might choose among the various development corporations. The holder would then be issued two series of instruments by the development corporations.

CONCLUSION

It would seem that a politically viable and not prohibitively expensive means of effectuating land reform in Latin America can be devel-

One would be bonds, of the same maturity and interest rate as the originals, the interest and principal payments likewise calculated in terms of the variation of a general cost-of-living standard, and likewise *guaranteed* (a second-layer guarantee) by the international consortium, although with the primary obligation to pay of the government development corporation secured by something like 75%, rather than 100% of the value of the originally contributed "first series" of bonds. Secondly, the development corporation would issue equity participation in proportion to the bondholdings, the stock probably to be of low or no par value, and to be voting or not as the local authorities might choose.

The originally contributed bonds would continue to be "inflation-proof" and to bear the full international guarantee in the hands of the development corporations. The approximately 25% of the value not held as security for the payment of the "second-layer" bonds could be used to secure the borrowing of funds to finance development projects. Assuming landlord investment of one-half of around \$15 billion (see note 40 *supra*), 25% of this would be about \$1.75 billion. This should get such a series of partially-internally-financed development corporations well underway, and they could then become, very appropriately, the focus for a significant proportion of normal Alliance for Progress aid funds.

It would seem desirable in those countries with large quantities of undeveloped land that one of the development corporations should have the function of developing new cropland. It might be possible to enlist the managerial talents of the investing ex-landlords in this relatively long-term land development project by giving to holders of equity units the right to manage a corresponding number of units of newly-opened lands, with some profit-sharing incentive. (Some lessons on how to run or not to run such an enterprise, which likely would also involve profit-sharing with the farm workers, can probably be gained from the Puerto Rican experience with "proportional profit" farms, see Rosenn, *supra* note 27, at 343 n.47.)

Presumably other of the development corporations could undertake profitable activities in connection with the development of existing agricultural enterprises, with a substantial, but not exclusive, focus on the new holdings created by the land-reform program. Thus, one development corporation might function in financing seed, fertilizer, capital-improvement and machinery loans, and also as a common quantity-buying agency for such items. It or other development corporations might also function in the establishment of such agriculture-connected operations as those undertaken by the Puerto Rican Land Authority: canning factories, fertilizer production, land reclamation and the operation of machinery-rental centers. See *id.* at 353-55.

Beyond their insurance liability, the consortium of developed countries should probably be prepared to undertake substantial outlays for a number of subsidiary features of a successful land-reform program. Again, there would arise the question of the extent to which these features should be spelled out as part of the basic guarantee agreement:

- (a) In some cases an extensive program of land-surveying and investigation of land titles might have to be carried out, with teams including experienced surveyors and administrators, in order to ensure that *campesinos* would receive indefeasible title to a well-defined plot. Cf. CHEN CHENG, *op. cit. supra* note 13, at 2.
- (b) At this and later stages, an expeditious system of conciliation and arbitration tribunals might have to be set up to process disputes.
- (c) Farmers would probably need seed, fertilizer and equipment loans, as noted above. Apart from the possible development-corporation source of financing, if local banks were short of funds, grants from the consortium or from an existing international lending institution might be made. In any event, the guarantee features of the arrangement conceivably might be extended to guaranteeing repayment of the loans made by state agencies to the *campesinos* for the purpose.
- (d) Considerable field training in modern agricultural techniques, and, especially, in the case of any cooperative enterprises, in administration, might be a highly desirable part of the total program.

oped by combining legal notions of "just compensation" from United States and international jurisprudence with a relatively straight-forward multilateral insuring mechanism. Attempts to formulate land reform programs based on marked departures from full-compensation concepts can, from this perspective, be seen as unnecessary in any theoretical financing sense, and consequently more easily seen as utterly self-defeating in a political and practical sense.

It might be noted that the concession *arguendo* in which I originally indulged—that all the landlords are monsters of iniquity⁵⁶—is of course a deliberately unrealistic one. Categorical application of limited-compensation or no-compensation concepts should be seen as further tainted by what it really is: application of criminal penalties without the particularization of charges and procedures which form a part of all civilized criminal jurisprudence. The most recent purchaser or inheritor of land, the responsible corporate landholder, and Simon Legree are thereby all dealt with on an equal footing.

It is time to turn from arid discussion of how to euchre the landlords to a consideration of methods for accomplishing land reform in the real world.

⁵⁶Or, putting it in terms of some of the categories developed in the discussion, one might alternately phrase it in terms of "all the *hacienda* holders."

